

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-0198

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

PETITIONERS' SECOND FURTHER STATUS REPORT

Now come the petitioners in the above-captioned case and report that the number of indigent defendants known to be entitled to counsel but without counsel in Hampden County was 23 on May 6, 2004, 37 on May 13, 2004, 48 on May 21, 2004, and is 39 as of the date of this filing. Petitioners further report that the Hampden County Public Defender Division office in Springfield is at a point where its caseloads exceed authorized caseload limits. See Affidavit of Andrew Silverman of May 5, 2004, at ¶5. As a result, Andrew Klyman, the Attorney-in-Charge of the Hampden County Office, has reported that his office is “at a breaking point” and must institute a temporary moratorium on intake of new case assignments.

Hampden Superior Court

1. Michael Guess; arraigned December 30, 1999;
Poss. firearm--subseq. off., poss. firearm;
2. James Bradley; arraigned April 9, 2004;
HDCR2004-00361; B&E n/t for felony, A&B by
means, A&B, intim. witness, trespass; \$30,000
cash, \$300,000 surety.
3. Luis Vallellanes; arraigned May 28, 2004;
HDCR2004-00530; Dist. class A--subseq. off.,
school zone; Bail: \$10,000 cash, \$35,000 surety;
arr. in Holyoke, #0417CR0667 04-15.

Springfield District Court

4. Jesus Gonzalez; arraigned on April 13, 2004;
#0423CR3333; Traf. in cocaine, firearm use in
felony, poss. firearm w/out FID, carrying dang.
weap., school zone, carrying firearm w/out lic.;
held on bail of \$10,000 cash, \$100,000 surety.
5. Albert J. Fulton, III; arraigned on May 14, 2004;
#0423CR3877; Firearms, armed home invasion,
armed asslt. in dwelling, armed rob.; held on bail
of \$5,000 cash, \$50,000 surety.
6. George Arroyo; arraigned May 14, 2004,
#0423CR4386; Dist. class A--subseq. off., poss. to
dist. class A--subseq. off., school zone; held on
bail of \$5,000 cash, \$50,000 surety.
7. Eric Daniels; arraigned on May 14, 2004,
#0423CR4381; Poss. class B--subseq. off.;
released.
8. Rafael Mestre, Jr.; arraigned on May 17, 2004,
#0423CR4387; Dist. class B--subseq. off., school
zone; held on bail of \$1,000 cash, \$10,000 surety.

9. Arnold Freeman, aka Jeffrey Thompson; arraigned May 5, 2004; shoplifting, larceny over, held on \$1000 cash bail.
10. Keith E. Taskey; arraigned May 5, 2004; assault and battery with a dangerous weapon; held on \$5000 cash bail.
11. Dana J. Jones; arraigned May 5, 2004, violation of 209A, threats, use w/o authority; held w/o right to bail.
12. Jonathan Marrero; arraigned May 5, 2004; traff. in cocaine; released on \$2500 personal surety.
13. Joseph Polamtier; arraigned May 5, 2004; co-D with Marrero; traff. in cocaine; held on \$500 cash bail.
14. Harold Vargas; arraignment date unknown; trafficking in cocaine; posted \$2500 cash bail.
15. Willie Middlebrooks; arraigned April 9, 2004, #0423CR3236; Dist. class A--subseq. off., poss. to dist. A--subseq. off., poss. class B--subseq. off.; held on bail of \$5,000 cash, \$50,000 surety.
16. Isaac Verdejo; arraigned May 5, 2004; #0423CR3952, viol. 209A, mal. damage to motor vehicle, assault and battery; released on \$1500 cash bail.
17. Tina Welch; arraigned May 6, 2004; trafficking in cocaine; held on \$250 bail.
18. Vernon Holmes; arraigned April 2, 2004, #0423CR4253; dist. cl B subsequent offense, school zone; held on \$5000 cash bail.

19. Miguel Rivera, arraignment date unknown; #0423CR3365; dist. cl. A, sub. offense, school zone; #0323CR7508; VOP; held on \$5000 cash bail.
20. Pedro Matteo, arraigned May 27, 2004; Class A w/intent; \$200 cash bail.

Holyoke District Court

21. Michael Carabello; arraigned April 2, 2004; held on bail of \$100,000 cash or \$500,000 surety.
22. Alberto Rivera; arraigned April 23, 2004; held on bail of \$10,000 cash or \$100,000 surety.
23. Richard Martinez; arraigned May 27, 2004; #0417CR2068; A&B, B&E misdemeanor, arson of dwelling; Bail: \$5,000 cash.
24. Jorge L. Garcia; arraigned April 7, 2004; released on bail of \$10,000, personal surety.

Chicopee District Court

25. Abraham Muniz; arraigned April 20, 2004; held on \$5,000 cash bail.
26. Thiago Barros; arraigned April 20, 2004; held on \$50,000 cash bail.
27. Tawanda Knighton; arraigned May 11, 2004; held on \$1,000 cash bail.
28. Philip Langley, arraigned May 10, 2004; #0420CR0828; agg. rape, A & B, Distr. Cocaine, carrying a firearm, using a firearm in the commission of a felony, Poss. cl. D. Held on \$250,000 cash bail.

29. Patrick Bass, arraigneded May 17, 2004;
#0420CR08601; agg. rape; \$500 cash bail posted.
30. Nicholas Casey; 06-25-04 PTH; #0420CR0964;
Rape; Released w/out bail--do not assault,
threaten, or intimidate witness (arr. 05-24).
31. Carlos Pazarro; arraigned May 24, 2004;
#0420CR0962; Rape; Released w/out bail.

Palmer District Court

32. Tami Przybycies; arraigned April 6, 2004; released
on personal recognizance, with conditions.
33. Nelson Dinzey; arraigned April 16, 2004; under
sentence.

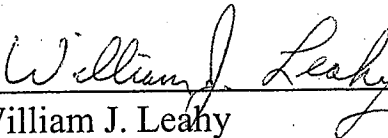
Westfield District Court

34. Lisa Quinn; arraigned May 13, 2004;
#0444CR0741, 0444CR0823; Dist. class D, threat
to commit murder, armed asslt to murder, A&B
dang. weap, A&B; held without right to bail.
35. Christopher Medina; arraigned May 17, 2004;
#0444CR0848; Traf. cocaine, poss. class D; held
on bail of \$5,000 cash or surety
36. Marco Sostre; arraigned May 17, 2004;
#0444CR0851; Traf. cocaine, false name; held on
bail of \$50,0000.
37. Alban Medina; arraigned May 17, 2004;
#0444CR0852; Traf. cocaine, carry dang. weap.,
poss. firearm w/out F.I.D. card, use of firearm in
felony, use of firearm w/ prior viol./drug
conviction; held on bail of \$100,000 cash.

38. Racqual Garcia; arraigned May 17, 2004;
#0444CR0853; Traf. cocaine, poss. class B; held
on \$2,000 cash bail.
39. Enrique Velez; arraigned May 27, 2004;
#0444CR0865; Open & gross, indec. A&B under
14, rape of child; Bail: \$50,000.

Petitioners further report that, as to the following individuals named in the petition or in petitioners' Motion to Amend the Petition to Name Additional Petitioners and Respondents filed on May 21, 2004, counsel has either been found or the case requiring counsel has otherwise been resolved: Nathaniel Lavallee; Jamar T. Gillerson; Cordelle Simmonds; Corey L. Smith; Maria Alvarado; Luis A. Osorio; Omar Hall; Angel Rivera; James Yates; Abigail Velez; John Carter; Reginald C. Smith; Debra Staples; Charles Foley; Douglas Lewis; Luciano Claudio, Jr.; Roberto Echevarria; Cory Phillips; Julio Morales; Leo Freeman; Serafin Melendez; Joel J. Rodriguez; Gregorio Garcia; Alexander Perez.

COMMITTEE FOR PUBLIC COUNSEL SERVICES
By its Chief Counsel,



William J. Leahy

BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street, Suite 200
Boston, Massachusetts 02108
(617) 482-6212

Dated: May 28, 2004.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF WILLIAM J. LEAHY

I, William J. Leahy, hereby state to the best of my knowledge and belief as follows:

1. As has been noted in affidavits filed previously in this case, the Committee for Public Counsel Services (CPCS) has twice voted since it commenced operations on July 1, 1984 to increase substantially the hourly rates of compensation for certified private counsel who accept CPCS assignments. The purpose of the instant affidavit is to provide the Court with the basis for these actions, and also to furnish the Court with a short history of the Committee's efforts to accomplish a level of funding which would sustain the right to counsel for poor persons in Massachusetts who are entitled to legal representation.

2. At its May, 1994 monthly meeting, the Committee adopted a recommendation by its Budget and Fiscal Subcommittee to eliminate then-existing discrepancies between rates for "in court" as opposed to "out of court" services, and to raise the hourly rates from their then-existing levels. For District Court criminal, juvenile delinquency and CHINS cases, this meant from an effective \$28 per hour rate, to an authorized level of \$50 per hour. For Superior Court criminal representation, it meant an increase from \$35 to \$65 per hour, and for murder cases an increase from \$50 per hour to \$85. The Committee acknowledged that the "subject to appropriation" language in G.L. chapter 211D, section 11 meant that CPCS could not unilaterally begin paying at the newly authorized hourly rates. At this same meeting, the Committee instituted an 1800 hour annual billing cap applicable to all assigned private counsel, and imposed stringent fiscal controls to prevent overbilling by attorneys.

3. Subsequently in 1994, CPCS was invited to participate in a study being undertaken by a special committee of the Massachusetts Bar Association, known as the Commission on Criminal Justice Attorney Compensation, as to the adequacy of the salaries and hourly rates paid to criminal defense attorneys and prosecutors. In its November, 1994 report, *Striking a Balance: Adequate Compensation – Effective Representation*, the

Commission emphasized at page twenty-seven that "[i]n Massachusetts ... the inadequate funding of our indigent defense program has clearly reached the crisis level and drastically impedes the implementation of the Sixth amendment rights to counsel and to a fair and speedy trial." In its Conclusion, at page thirty-three, the Commission recommended that

"compensation of bar advocate attorneys should be increased for in-court and out-of-court work performed to \$50 per hour for all district court criminal matters including juvenile, \$65 per hour for all Superior Court criminal matters and juvenile court transfers (except murder) and for appeals and \$85 per hour for all murder cases and murder appeals; bar advocate attorneys' hourly rate should be reviewed every two years and periodically increased as appropriate."

A copy of the Commission's Report is appended hereto as Attachment 1.

4. Following the CPCS authorization and MBA report, the Legislature in its FY1996 budget changed the District Court rate to \$30 per hour, for in and out of court services, and the murder rate to \$54 per hour. In its FY1997 budget, it raised the Superior Court rate to \$39 per hour.

5. On April 6, 1999, I testified at a Joint Committee on the Judiciary hearing in support of House Bill 2741, a proposal to increase the hourly rates paid to assigned private counsel. I described the inadequacy of the rates, the importance of the representation which the attorneys provided, and a summary of the CPCS efforts to achieve funding for the rates it had

established in 1994. A copy of my testimony is appended hereto as Attachment 2.

6. In February and March, 2000, I presented the **CPCS FY 2001 Budget Request** to the House and the Senate Committees on Ways and Means. In that request, CPCS presented a plan to raise the hourly rate for murder cases by \$10 per hour, and to raise the hourly rate for all other cases by \$7 per hour over a three-year period. A copy of the CPCS budget proposal is appended hereto as Attachment 3. A copy of my presentation to the Senate Ways and Means Committees dated March 16, 2000 is appended as attachment 3A.

7. On June 5, 2000, the Massachusetts Lawyers Weekly editorialized in support of a House-passed hourly rate increase of \$3 an hour for District and Superior court cases and \$6 an hour for murder cases. The editorial urged the Senate and the Governor to "follow suit and approve this much-deserved increase." (They did not.) The editorial went on to say that "[e]ven if the measure is enacted ... bar-advocate compensation will still be insufficient." A copy of the editorial is appended hereto as Attachment 4.

8. In February and March, 2001, I presented the **CPCS FY 2002 Budget Request** to the House and the Senate Committees on Ways and Means. In that request, CPCS proposed an hourly rate increase of \$10 per

hour in murder cases, and \$5 per hour for all other cases. The intent of this proposal was to "catch up" to the level which we had sought to accomplish in year two of the three-year gradual increase program which had passed the House, but died in conference, in the previous year. A copy of the CPCS FY 2002 budget proposal is appended as Attachment 5. A copy of the information submitted to the House Ways and Means Committee on February 27, 2001, which included an Assigned Counsel Hourly Rate History for the years 1986 to 2001, is appended as Attachment 5A.

9. On March 1 and 13, 2002, I presented the **CPCS FY 2003 Budget Request** to the House and Senate Committees on Ways and Means. In that request, CPCS again proposed hourly rate increases of \$10 an hour for murder cases, and \$5 per hour for all other cases. A copy of the CPCS FY 2003 budget request is appended hereto as Attachment 6.

10. On February 18, 2003, an article I wrote in anticipation of the 40th anniversary of the right to counsel decision in Gideon v. Wainwright, 372 U. S. 335 (1963), was published on the op-ed page of the Boston Herald. The article, which bore the unfortunately altered title, "Stiffing of legal aid undermines justice," but which otherwise emerged largely unscathed from the editorial process, recounted the pioneering role which the Massachusetts judiciary undertook in anticipating the expansion of the

federal constitutional right, and the critical role which Massachusetts law enforcement officials played in establishing the right to counsel under the Federal constitution. The article contrasted this proud history with the absence of sufficient fiscal support to sustain life in the indigent counsel principle forty years later. A copy of the article is appended as Attachment 7.

11. On March 18, 2003, I gave public remarks at the Massachusetts State House, along with several judges and legislators, to mark the Gideon anniversary. In my remarks, I stated that it was "both ironic and accurate to observe that Massachusetts, which did so much to create the counsel right enshrined by Gideon, has failed to adequately support the vibrant development of that right." A copy of my remarks, which are entitled A Somber Birthday, is appended as Attachment 8.

12. Also on March 18, 2003, I presented the **CPCS FY 2004 Budget Request** to a joint session of the House and Senate Ways and Means Committees in Lynn. In that request, CPCS once again proposed hourly rate increases of \$10 per hour in murder cases and \$5 per hour in all other cases, as a first step toward implementation of the rates of \$60/\$90/\$120 established by CPCS in December, 2002. In my prepared remarks, at page four, I argued that "[t]he serious and long ignored inadequacy of private counsel

hourly rates and CPCS staff attorney salaries should be addressed in this budget[.]” A copy of the CPCS FY 2004 budget request is appended as Attachment 9. A copy of my written testimony is appended as Attachment 9A. A copy of the supporting documentation which I introduced at the hearing is appended as Attachment 9B.

13. In February, 2003, CPCS hosted a meeting which included the Chief Justice of the Juvenile Court, the Commissioner of the Department of Social Services, and the co-Directors of the CPCS children and Family Law program, to address the crisis of counsel unavailability in Child Welfare cases in western Massachusetts. The eventual result of this meeting was an October, 2003 report prepared by the Spangenberg Group, entitled **Western Massachusetts Child Welfare Cases: The Court-Appointed Counsel System in Crisis**. A principal focus of this comprehensive study, was the “wholly inadequate and unfair” hourly rate structure. See Executive Summary at p. i. A copy of this report is appended hereto as Attachment 10.

14. In November, 2003, I was invited to testify at the American Bar Association’s Hearing on the Right to counsel 40 Years After Gideon v. Wainwright in Seattle. A copy of my testimony is appended hereto as Attachment 11.

15. On February 3, 2004, I testified before the Joint Committee on the Judiciary in support of House Bill 4321, which would increase the minimum rate for CPCS assigned cases to \$60 per hour. A copy of my testimony is appended as Attachment 12. A copy of the CPCS press release describing the hearing, and announcing the Judiciary Committee's immediate favorable report of the bill, is appended as Attachment 12A.

16. On February 16, 2004, my article entitled '**Better Pay for Bar Advocates': A Rejoinder** was published in the Massachusetts Lawyers Weekly. A copy of the article is appended hereto as Attachment 13.

17. On February 24, 2004, I presented the **CPCS FY 2005 Budget Request** to a joint session of the House and Senate Committees on Ways and Means in Worcester. In that request, CPCS sought full funding for payment of the hourly rates which it had established in 2002. In my remarks, I stated that "[h]ourly rates for private counsel are the third-lowest in the nation, and have not been significantly increased in almost twenty years. Staff counsel salaries are the lowest in Massachusetts state government." A copy of the CPCS FY 2005 budget request is appended as Attachment 14. A copy of my written testimony is appended as Attachment 14A. A copy of the supporting documentation which I introduced at the hearing is appended as Attachment 14B.

18. On March 8, 2004, I filed the **FY04 Report to the Legislature on the Committee for Public Counsel Services** with the House and Senate Committees on Ways and Means, as required under the terms of our FY2004 appropriation language. Copies were also delivered to the Speaker of the House of Representatives, the President of the Senate, and the Chief legal counsel to the Governor, among many others. I concluded as follows:

We reiterate last year's message that the major inadequacy in the Massachusetts system for providing counsel for the poor ... is the unacceptably low levels of compensation which are paid to assigned private counsel and CPCS staff attorneys. Meaningful increases in the hourly rates paid to private counsel, and the salaries paid to staff attorneys, are fully justified and long overdue. The outpouring of legislative support for H.4321 ... has given hope that this need is finally being recognized. In addition, while the funding proposed in H.1 is wholly inadequate, we applaud the Governor's recognition in outside budget section 298 that both assigned private counsel and CPCS staff attorneys are significantly underpaid.

A copy of this Report to the Legislature is appended as Attachment 15.

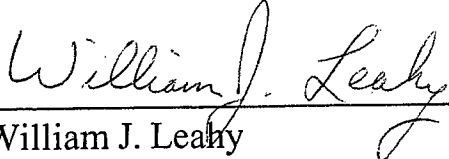
19. Our previous Report to the Legislature, which I filed on February 3, 2003, concluded with the statement that "[t]here is a compelling need to increase substantially the hourly rates of compensation paid to assigned counsel who represent indigent CPCS clients." A copy of this Report is appended hereto as Attachment 16.

20. On April 20, 2004, I participated in a "roundtable" discussion of

the issues concerning the CPCS assigned counsel program with three other participants, at the offices of the Massachusetts Lawyers Weekly in Boston. Toward the end of that discussion, Daniel B. Winslow, the Governor's Chief Legal Counsel, accurately stated, "One point we've all agreed on ... is that our bar-advocate system is collapsing around our ears and likely will not sustain another fiscal year."

21. As it happened, the "roundtable" took place on the same day that I declared a counsel emergency in Hampden County, as detailed in my letter to Judge Sweeney dated April 20, 2004, which has previously-been filed in this case. A copy of excerpts from the roundtable discussion printed in the May 10, 2004, edition of Massachusetts Lawyers Weekly, under the heading **Bar Advocates: Can the System Be Saved?**, is appended hereto as Attachment 17.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 28th DAY OF MAY, 2004.



William J. Leahy
Chief Counsel
COMMITTEE FOR PUBLIC COUNSEL SERVICES
BBO #290140
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(617) 482-6212

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
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V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF WILLIE J. DAVIS

I, Willie J. Davis, hereby state to the best of my knowledge and belief that:

1. I am an attorney and the founding partner of the law firm Davis, Robinson and White, located at One Faneuil Hall Marketplace in Boston. I have been a member of the Massachusetts bar since 1963.

2. In March, 1997, I was selected by the Justices of the Supreme Judicial Court as a member of the Committee for Public Counsel Services, and I have served as a member of the Committee to this day.

3. In March, 2000, I was elected by the members of CPCS to serve as its Chairman, and I continue to serve in this position.

4. During my tenure as a member of the Committee, CPCS has conducted the three most recent of its biannual series of public hearings concerning the adequacy of attorney compensation, as required by G. L. c.211D, §11, Establishment and Review of Compensation Rates. These hearings were conducted during the fall season of 1998, 2000, and 2002, and numbered eight hearings,

which were held in seven locations throughout the Commonwealth. Two hearings were held in Springfield.

5. At these hearings, the Committee heard insistently that rates of compensation were too low to cover the attorneys' costs of operating a law practice and earning a living. Many attorneys stated that the rates were so inadequate that, unless they were substantially increased, the attorneys would have to leave the CPCS lists entirely, or limit their acceptance of assigned cases to only a few.

6. There has been no higher CPCS priority during my tenure as member and Chair than the pursuit of more adequate compensation for the private attorneys and salaried staff counsel who fulfill our mandate under G.L. c.211D to provide competent counsel to the quarter of a million indigent clients whom we are duty-bound to represent every year. To this end, we have annually proposed and advocated for higher hourly rates and salaries, in sufficient degree to retain the services of experienced private and public counsel, and to recruit additional attorneys to our lists of certified counsel in our many and diverse civil and criminal areas of responsibility.

7. To this end, we have annually filed for increases in the CPCS appropriation for the specific purpose of augmenting attorney compensation. Recognizing the extent of the need, and the economic conditions prevalent in the Commonwealth in recent years, we have usually asked in our annual Budget Request for increases of a more modest extent than is actually justified. We have

done so because we have concluded, after extensive discussion, that more expensive requests would not have succeeded in the annual state budget process. That our judgment is correct has been proven, unfortunately, by the failure of even our modest requests, every year, to be included in the final state budget.

8. In fact, in July, 2003, fully \$13 million dollars or eighteen percent of the \$72 million appropriated by the legislature for FY 04 Private Counsel compensation was vetoed by the Governor, and not overridden by the Legislature. While the resulting shortfall was covered by a supplemental \$16 million appropriation in April, 2004, the fear and the anger which it generated among assigned private counsel contributed further to the unwillingness of certified attorneys, particularly the more experienced attorneys, to continue accepting as many, or any, assignments from CPCS.

9. In the aftermath of the failure to obtain hourly rate increases in the FY 2001 budget process, as described in Chief Counsel Leahy's May 28, 2004, affidavit at ¶¶ six and seven, I appointed a Compensation Subcommittee chaired by CPCS Vice Chairman Matthew H. Feinberg to review the adequacy of the hourly rates which the Committee had authorized in 1994.

10. At its December, 2002 monthly meeting, CPCS adopted the recommendation of its Compensation Subcommittee to establish new hourly rates of compensation. These new rates of \$60, \$90 and \$120 were established after review of the national survey of court-appointed counsel compensation prepared

by the Spangenberg Group in July, 2002, and filed in this litigation on May 20, 2004; and after consideration of the public hearings which had been held in 1998, 2000, and especially 2002.

11. As to the 2002 compensation hearings, which were held in Springfield on October 23, in Taunton on November 6, and in Boston on November 18 (which hearing I chaired), the Committee also had the benefit at its November 21, 2002, meeting of Deputy Chief Counsel Patricia A. Wynn's summary of the testimony which those hearings elicited. One consistent message was that experienced attorneys were increasingly declining to accept CPCS assignments, due to inadequate compensation. Speakers expressed consistent concern that the quality of representation would suffer as less experienced attorneys fill in for those who no longer accept CPCS assignments. Speakers also expressed concern that heavier caseloads, resulting from the imbalance of available attorneys relative to the number of total assignments, would have a negative impact upon the quality of the representation provided to CPCS clients.

12. Beginning in February, 2004, the Committee members began to receive notices from the Superior Court of Hampden County, in the form of Orders to Assign Counsel to persons for whom neither the court, nor the CPCS public defender office in Springfield, nor the Hampden County Bar Advocate Program

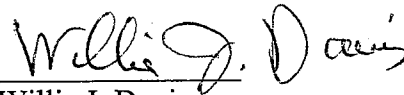
with which CPCS contracts to provide counsel in such cases, had been successful in obtaining counsel.

13. On at least eight occasions between February and May, 2004, aided by the intervention of senior CPCS staff, counsel was obtained for a Superior Court defendant as to whom the Committee members were under an Order to Assign Counsel. On May 14, 2004, eight days after senior Committee staff, acting at the Committee's direction, had filed and argued a Petition for Relief Pursuant to G.L. c.211, §3, in the Supreme Judicial Court for Suffolk County in this case, an identical Order issued in the case of Commonwealth v. James Yates, with a deadline of May 20.

14. Despite the personal appearance of the Committee's Chief Counsel before the Superior Court on May 20, the Court issued to each member of the Committee an ORDER OF NOTICE TO SHOW CAUSE RE: CIVIL CONTEMPT OF COURT, and scheduled a hearing for June 2 in Springfield. A copy of this Order was filed with the Single Justice on May 24, 2004.

15. While the Chief Counsel was able to persuade an attorney, on May 26, to accept an assignment in Yates, and while the MOTION TO VACATE ORDER OF NOTICE TO SHOW CAUSE filed on that date on behalf of all fifteen committee members was allowed by the Superior Court, I consider this episode all too likely to be repeated in the future, as a steady stream of unrepresented defendants comes before the court, and the unavailability of counsel continues.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 28th DAY
OF MAY, 2004.

A handwritten signature in cursive script, reading "Willie J. Davis". The signature is written in dark ink and is positioned above the printed name.

Willie J. Davis

BBO # 116460

Davis, Robinson and White

One Faneuil Hall Marketplace

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617-723-7339

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
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SJ-2004-1998

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V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

FURTHER AFFIDAVIT OF PATRICIA A. WYNN

I, Patricia A. Wynn, do hereby depose and state that:

1. I am the Deputy Chief Counsel of the Private Counsel Division of the Committee for Public Counsel Services (CPCS).
2. In my capacity as Deputy Chief Counsel of the Private Counsel Division, I am responsible for the provision of legal services by private attorneys on all criminal and civil matters for which CPCS assigns counsel under G. L. c.211D.
3. Each private attorney who accepts a court appointment under G. L. c.211D, receives a notice of assignment of counsel (NAC) for each such appointment.
4. I have analyzed the NAC form data pertaining to assignments in the four counties surrounding Hampden County (Berkshire, Franklin, Hampshire, and Worcester) over the past five fiscal years to assess whether the bar advocate

programs in those counties would be able to absorb any increase in the number of cases that would have to be assigned by them in the event that the Public Defender Division offices in those counties were to cease accepting cases or seek re-assignment of open cases so that Public Defender Division staff attorneys could be made available to represent indigent defendants in Hampden County.

5. My review of the relevant data, further described in ¶¶ eight through twelve of this affidavit, reveals that the number of private attorneys accepting Superior Court assignments in Berkshire and Hampshire Counties in this fiscal year is at a five year low and that the number of private attorneys accepting Superior Court assignments in Franklin and Worcester Counties has remained stagnant since July of 1999, varying by not more than three attorneys from year to year.

6. My review of the relevant data, further described in ¶¶ eight through twelve, also reveals that the number of private attorneys accepting ten or more assignments in this fiscal year is at a five year low in Berkshire, Franklin and Hampshire Counties and is at three year low in Worcester County.

7. As attested to in the affidavits of Chrstine R. Baronas, John M. Kaufman, Rebecca Ryan, and Christine Murray, the bar advocate programs in each of those counties is currently only barely able to find attorneys for its existing inflow of assignments. Based on this information and the NAC data documenting a nearly five-year lack of growth in the number of attorneys accepting assignments in the

counties surrounding Hampden County as well as a decline in the number of such attorneys who accept ten or more assignments in a fiscal year, I do not believe that the private attorneys in those counties could absorb an increase in the number of Superior Court cases to be assigned to them by the bar advocate programs if the Public Defender Division offices in those counties either stopped accepting cases or sought the re-assignment of open cases to Private Counsel Division attorneys to address the assigned counsel crisis in Hampden County.

8. In Berkshire County, through May 25, 2004, of the current fiscal year (FY2004), thirteen private attorneys accepted assignments on Superior Court cases. Of those thirteen attorneys, only two have accepted ten or more assignments. The largest number of attorneys accepting Superior Court assignments in Berkshire County during the same period (July 1 to May 25) in FY2003, FY2002, FY2001, or FY2000 is eighteen, and the largest number of attorneys accepting more than ten such assignments in any of those fiscal years is four.

9. In Franklin County, through May 25, 2004, of FY2004, ten private attorneys accepted assignments in Superior Court cases. Of those ten attorneys, only one has accepted ten or more assignments. The largest number of attorneys accepting Superior Court assignments in Franklin County during the same period (July 1 to May 25) in FY2003, FY2002, FY2001, or FY2000 is ten, and the largest

number of attorneys accepting more than ten such assignments in any such period is four.

10. In Hampshire County, through May 25, 2004, of FY2004, five private attorneys accepted assignments in Superior Court cases. None of those five attorneys accepted ten or more assignments. The largest number of attorneys accepting Superior Court assignments in Hampshire County during the same period (July 1 to May 25) in FY2003, FY2002, FY2001, or FY2000 is fourteen. None of those attorneys accepted ten or more assignments.

11. In Worcester County, through May 25, 2004, of FY2004, thirty-three private attorneys accepted assignments in Superior Court cases. Of those thirty-three attorneys, only thirteen have accepted ten or more assignments. The largest number of attorneys accepting Superior Court assignments during the same period (July 1 to May 25) in FY2003, FY2002, FY2001, or FY2000, is thirty-seven, and the largest number of attorneys who have accepted ten or more such assignment in any such period is fifteen.

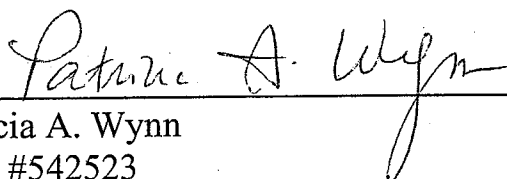
12. In addition to the NAC data for each of the four counties surrounding Hampden County, as reported above, I have reviewed the combined NAC data for Berkshire, Franklin, Hampshire and Worcester Counties. According to the combined data, through May 25, 2004, of FY2004, a total of sixty-one private attorneys accepted Superior Court assignments in the four counties but only sixteen

attorneys in all four counties combined accepted ten or more assignments. For the four counties combined, the largest total number of private attorneys accepting Superior Court assignments during the same period (July 1 to May 25) in FY2003, FY2002, FY2001, or FY2000 is seventy-two, and the largest total number of attorneys who accepted ten or more such assignments in any such period is twenty-two. The FY2004 combined total of sixty-one private attorneys accepting Superior Court assignments is at a five year low and the FY2004 combined total number of attorneys accepting ten or more assignments, which is just sixteen attorneys, is at a three year low.

13. While Superior Court certified attorneys may choose to accept assignments in more than one county, none of the sixty-one Superior Court certified attorneys who have accepted assignments in Berkshire, Franklin, Hampshire, and Worcester Counties in FY2004 have accepted assignments in more than one county. Each of the sixty-one attorneys has limited his or her Superior Court practice to one county. CPCS is without the authority, under G. L. c.211D or by contract, to require private attorneys to take cases in any particular county or court, or to require a private attorney to accept assignments in more than one county. Even if CPCS were granted such authority, it would be ineffective to address the limited number of attorneys available to accept assignments. Shifting attorneys from county to county or court to court simply shifts the problems of the inability

to assign counsel and the existence of defendants without counsel from one location to another.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS
28th DAY OF MAY, 2004.



Patricia A. Wynn
BBO #542523
COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street
Boston, MA 02108
(617) 482-6212

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF CHRISTINE R. BARONAS

I, Christine R. Baronas, do swear the following information is true to the best of my knowledge and belief:

1. I am the Administrator of the Franklin County Bar Advocate Program.
2. As my duties include recruiting and assigning attorneys to represent criminally accused indigent persons in District, Juvenile, and Superior Court, I have direct knowledge of the availability of bar advocate attorneys in Franklin County.
3. The bar advocate program here is small and our panel of attorneys who are qualified to accept appointments for Superior Court cases is even smaller. We currently have a total of thirty-one attorneys on our panel, of whom only nine are Superior Court-certified.

4. At times it takes several days to find an attorney who is willing and able to accept a Superior Court case. Sometimes we are unable to assign a Superior Court case and must ask another county's bar advocate program to find an attorney.

5. If the Hampshire County office of CPCS's Public Defender Division (which covers both Hampshire and Franklin Counties) sought to turn over its open cases to the bar advocate attorneys on our panel, I would, at best, be able to serve a couple of defendants. More than that would not be possible.

6. If the Public Defender Division office in Hampshire County were to stop accepting future cases, I envision a situation in this county that is the same as what currently exists in Hampden County. The problem of not being able to assign attorneys to defendants would simply move from one county to another.

7. For the past year, we have been asking panel attorneys from our area to consider accepting assignments in Hampden County in order to help alleviate the counsel shortfall there, but our local attorneys have not been willing or able to accept such assignments.

8. We are managing to provide services required under our contract, but just barely; newer attorneys are not signing up for Superior Court work

May-23-2004 08:08am From COMMITTEE FOR PUBLIC COUNCIL SERVICES

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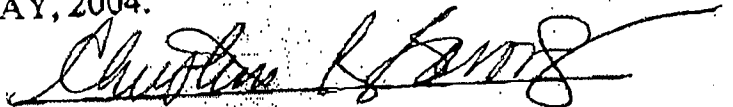
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because of the low rate of pay and more experienced attorneys are slowly dropping out because the compensation rate is not worth their time.

9. We do not have sufficient bar advocate attorneys available to respond to any increased need for services over and above the number of cases we are currently covering.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 28th DAY OF MAY, 2004.



Christine R. Baronas

Administrator

Franklin County Bar Association Advocates, Inc.

20 Federal Street, Suite 4

Greenfield, MA 01301-3302

(413) 774-2994

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF JOHN M. KAUFMAN

I, John M. Kaufman, under the pains and penalties of perjury, hereby
depose and say:

1. I am in attorney who has practiced law in Berkshire County since
1985. I submit this affidavit in my capacity as Executive Director of the
Berkshire County Bar Advocates, Inc.

2. Berkshire County Bar Advocates, Inc. is a non-profit corporation
contracting with the Committee for Public Counsel Services (CPCS) to
provide attorneys accepting appointments to represent indigent defendants
in Central Berkshire District Court, Southern Berkshire District Court,
Northern Berkshire District Court, the Juvenile Courts of Berkshire County,
and Berkshire Superior Court.

3. We currently have twelve (12) attorneys, of whom I am one, on
our panel who are certified to take appointments in Superior Court cases.

4. These attorneys accept appointments to represent indigent defendants in Berkshire Superior Court on all cases that the full-time staff of CPCS's Public Defender Division office in Pittsfield is unable to represent due to conflicts or other reasons.

5. During the past one and one-half years that I have served as Executive Director, it has been extremely difficult to find lawyers willing to accept all of the appointments required in the Berkshire Superior Court.

6. There are many attorneys among the twelve on the panel who restrict the number of Superior Court appointments that they are willing to accept.

7. All of the attorneys on our Superior Court panel operate a private practice of law with offices in Berkshire County. Reasons most often given by them for their inability to accept appointments include the press of private practice and the demands that that practice makes on the attorney's schedule, and the insufficient hourly remuneration which makes it financially detrimental to accept larger numbers of Superior Court assigned counsel cases and still meet the financial demands of running a private law practice.

8. If the three full-time Public Defenders in Berkshire County stopped taking Berkshire County Superior Court cases in an effort to assist

in Hampden County, the only way that indigent Superior Court defendants could obtain representation in Berkshire County would be by the assignment of all of these cases through Berkshire County Bar Advocate, Inc.

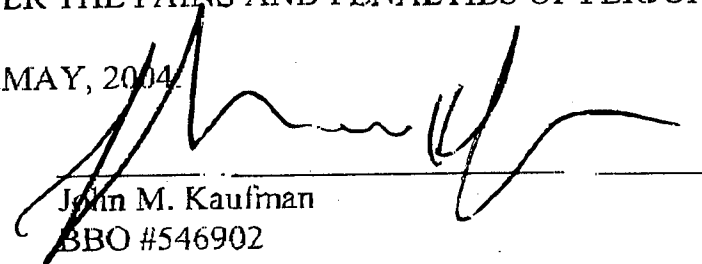
9. Due to the unwillingness of the vast majority of attorneys on the Superior Court panel in Berkshire County to accept a great number of cases simultaneously, it would not be possible to convince the twelve Superior Court-qualified attorneys in Berkshire County to represent all indigent defendants in Superior Court.

10. There are not enough Superior Court-certified attorneys on the panel in Berkshire County to cover all Superior Court jurisdiction criminal cases with indigent defendants. This would be true even if the three full-time CPCS Public Defenders continued their representation of all pending cases, and only stopped taking any new Superior Court jurisdiction cases in order to cover the shortfall in Hampden County. The situation would obviously present even more problems if the three CPCS Public Defenders in Berkshire County withdrew from all of their pending cases and stopped taking new appointments, and Berkshire County Bar Advocates, Inc. were required to provide representation on all of the withdrawn cases in addition to all of the new Superior Court cases in Berkshire County.

11. It has been extremely difficult to find any new attorneys to go on the Superior Court panel because the compensation is too low, and the cases take a great deal of time to provide proper representation.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 28th DAY OF MAY, 2004



John M. Kaufman
BBO #546902
Executive Director
Berkshire County Bar Advocates, Inc.
85 East Street
Pittsfield, MA 01201-5313
(413) 442-7444

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF CHRISTINE M. MURRAY

I, Christine M. Murray, hereby swear:

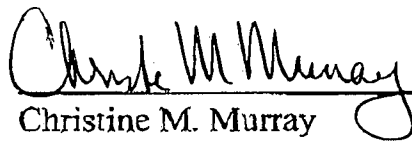
1. I am the Administrator of the Bar Advocates of Worcester County, Inc., and have held this position for over twelve years.
2. I am responsible for assigning lawyers to represent indigent defendants throughout Worcester County.
3. We provide representation in the Superior Court, Juvenile Court, and eleven District Courts in Worcester County.
4. We have regularly experienced difficulties finding counsel for indigent clients. To the extent that we have had difficulties providing counsel, those difficulties have primarily been in finding attorneys to take cases at the Superior Court level. Our Superior Court-certified attorneys are almost always reluctant or unwilling to take on additional cases. At the present time, our bar advocate program has only about sixteen attorneys, a barely adequate number, who are willing to handle Superior Court cases.

5. If the Public Defender Office in Worcester County reduced its ability to take cases and Bar Advocates of Worcester was expected to step in and cover those cases, we would not have an adequate number of attorneys willing to pick up the extra cases. This would result in assignment delays, clients incarcerated with no counsel, and, potentially, clients going unrepresented if no willing attorney could be found.

6. If the Public Defender Office in Worcester County stopped taking any cases at all, even for a limited period of time, and Bar Advocates of Worcester was expected to find attorneys for cases ordinarily taken by the Public Defender Office, in all likelihood the program would experience the same difficulties, except on an even greater scale. Also, given the nature of the difficulties we are presently experiencing, I fear that the bar advocate attorneys who are currently willing to accept cases will become overloaded, refuse more cases, or resign from the program outright.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 28 DAY OF MAY, 2004.



Christine M. Murray
Administrator
Bar Advocates of Worcester County
19 Norwich Street
Worcester, MA 01608
(508) 753-9069

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF REBECCA RYAN

I, Rebecca J. Ryan, hereby state the following under the pains and penalties of perjury:

1. I am the administrator of the Hampshire County Bar Advocates Program, and have been in my current position for approximately eight years.

2. The Hampshire County Bar Advocates program is responsible for the scheduling of Bar Advocate attorneys to cover "duty days" in the Northampton, Hadley, and Ware District Courts, and the Hampshire Juvenile Court, sitting in both Northampton and Ware. The Program is also responsible for the Hampshire Superior Court when the CPCS Hampshire County Public Defender Division office is unable to accept assignments.

3. The Hampshire County Bar Advocates program currently has sixty active attorneys on its roster. Active status for our program means that a

Bar Advocate attorney accepts a minimum of two duty days per year, July 1st – June 30th.

4. Although the number of panel attorneys has remained more or less constant over the past several years, the number of duty days that these attorneys have been willing to accept has declined.

5. In January, February, and March of 2004, we were not able to provide duty attorneys for 14 percent of our duty day coverage in the district courts.

6. During April and May of 2004, it was even more difficult to find attorneys willing to duty coverage, and we were able to provide only fifty percent of our needed duty day coverage.

7. During the month of May, 2004, the percentage of duty days on which we have NOT been able to arrange coverage by bar advocate attorneys has been 55% in the Hadley District Court, 100% in the Ware District Court, 25% in the Northampton District Court, and 50% in the Hampshire Juvenile Court.

8. Arranging duty coverage was made more difficult by the opening of the Hadley District Court in July, 2003. Originally, the idea was that Hadley District Court would have duty days on Tuesday, Wednesday, and Thursday each week. It was thought that on any given day a bar advocate

attorney would be able to split his or her time between Northampton and Hadley District Courts. This idea lasted only a few months, before it became apparent that a separate bar advocate would have to be scheduled for each court each day. The need to schedule separate attorneys for multiple district courts put an enormous demand on our panel attorneys, and led to a situation in which there were effectively two panels: one on each side of the river!

9. Providing needed bar advocate attorneys was made more difficult in November, 2003, when Ware District Court, which previously had sessions with bar advocates on Mondays and Fridays, went to a schedule where it only heard cases on Fridays. Since November, 2003, the cases previously heard in Ware on Mondays, have been heard instead in Hadley District Court. Our panel attorneys have found these developments very frustrating. As a result, and rather than go to both Ware and Hadley District Courts, almost all of our panel attorneys have stopped taking cases in Ware District Court.

10. Because of difficult travel logistics, time constraints, scheduling conflicts between Hadley, Ware, and Northampton District Courts, and concern that CPCS would run out of money to pay attorneys for work they had done, attorneys cut back on the duty days they would take.

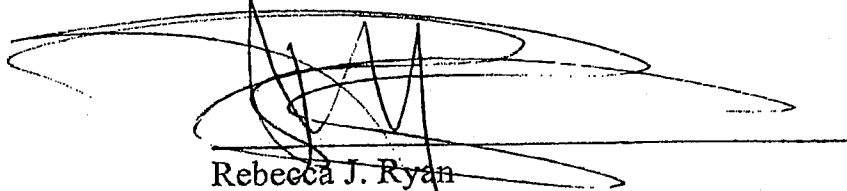
11. On days when there is no duty attorney present in court, attorneys are asked by the Judge (and court staff) to take cases; many attorneys agree to do so. This practice has made it more challenging to schedule attorneys for duty days because many attorneys have come to expect that they can get all of their cases by just being in court. As a result, attorneys have signed up for significantly fewer duty days.

12. We currently have 17 Superior Court-certified bar advocate attorneys, sixty percent of whom are also active in the District Courts of Hampshire County.

13. If the CPCS Public Defender Division office in Hampshire County were to relinquish its caseload, so that its attorneys could be utilized in Hampden County to deal with the current crisis there, the Hampshire County Bar Advocate Program would not be able to find attorneys to take the existing cases of the Public Defender Division office; nor does the Hampshire Bar Advocate Program have sufficient attorneys on its panel to take the new cases that previously would have gone to the Public Defender Division office. We simply do not have a sufficient number of Superior Court attorneys on our panel who are willing to take on additional cases.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 27 DAY OF MAY, 2004.

A handwritten signature in dark ink, appearing to be 'Rebecca J. Ryan', written over a horizontal line.

Rebecca J. Ryan
Administrator
Hampshire County Bar Advocates, Inc.
Court House, 15 Gothic Street
Northampton, MA 01060-3084
(413) 586-5038

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF TIMOTHY M. FARRIS

Under oath I depose and state the following:

1. My name is Timothy M. Farris. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts. My office address is 1365 Main Street, Springfield, Massachusetts 01103.

2. I have been admitted to practice law in the Commonwealth since December, 1987.

3. I am a member of the Board of Directors of Hampden County Bar Advocates, Inc. and currently serve as Vice President of Hampden County Bar Advocates, Inc.

4. I have previously served as a member of the Massachusetts Bar Association Criminal Justice Section Council where I was the Chair of the Section Council for 2001-2002 and 2002-2003.

5. I am a member of the Springfield District Court Operations

Committee and have served on the Operations Committee since its inception in the spring of 1996.

6. I have taken appointments from the Committee for Public Counsel Services since 1990 and I am a member of the post-conviction panel, Superior Court panel (accepting appointments in Berkshire Superior Court) and the mentor panel for post-conviction cases.

7. On or about April 27, 2004, I served as the Bar Advocate in Springfield District Court for the arraignment session. On that date I was the only Bar Advocate scheduled in the Court to accept appointments on behalf of indigent criminal defendants. I received a total of thirty-seven (37) new clients, some of whom had multiple cases.

8. As a direct result of receiving the large number of new clients during my service as Bar Advocate in April, 2004, I was only able to volunteer for one Bar Advocate duty day for the month of May, 2004, where I normally would serve at least two (2) duty days in any given month.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 27th DAY OF MAY, 2004.

Timothy M Farris

Timothy M. Farris
BBO #550008
1365 Main Street
Springfield, MA 01103
(413) 731-5002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF MICHAEL S. HUSSEY

I, Michael S. Hussey, do hereby depose and say that the following statements are true to the best of my information, knowledge, and belief:

1. I am the Attorney-in-Charge of the Worcester office of the Public Defender Division of the Committee for Public Counsel Services (CPCS). I have been employed as an attorney with CPCS since 1985, and I have been Attorney-in-Charge of the Worcester office since 1993.

2. The Worcester office consists of a total of seven staff attorneys (including myself), an investigator, an administrative assistant, and a secretary. The office has been staffed by as many as ten attorneys in the past but has been reduced to seven as a result of budget cuts.

3. The Worcester office accepts appointments only in Superior Court jurisdiction felony cases, so called "bind over" felonies because they are not within the final jurisdiction of the District Court. The office's attorneys

represent clients in these cases prior to indictment in all eleven District Courts in Worcester County: Worcester, Clinton, Dudley, East Brookfield, Fitchburg, Gardner, Leominster, Milford, Uxbridge, Westborough, and Winchendon. The office also accepts some cases that begin by direct indictment in Worcester Superior Court.

4. Our cases primarily involve sex offense charges, minimum mandatory drug trafficking and "repeat offender" offenses, and serious aggravated assaults. In practical terms, this means that in the majority of our cases the stakes are extremely high, and our clients are facing the possibility of substantial incarceration should they either plead or be found guilty. Our office also handles a relatively small number of sexually dangerous person commitment proceedings and sex offender registry matters.

5. The reduction in staff attorneys in recent years has resulted in the Worcester office's having to cut back on case intake by not taking certain types of cases. Thus, we are presently attempting to deal with our staff shortages by not accepting appointments in drug cases carrying less than a minimum mandatory five-year sentence, youthful offender cases in Juvenile Court, and Superior Court violation of probation cases. Moreover, when we temporarily lose attorneys due to resignations or leaves of absence

(maternity leaves for example) and drop down to fewer than seven attorneys, we must further reduce our intake by, for example, not accepting any drug cases all, or any unarmed robberies, or any unarmed burglaries.

6. All seven attorneys in the Worcester office have extremely full caseloads, and the attorneys are working extraordinarily hard to provide effective representation to their current clients. Our attorneys work considerably more than forty hours per week, and they frequently work on nights and weekends. I firmly believe that our attorneys could not take on additional cases and still provide constitutionally competent representation to their existing clients.

7. The salaries paid to Public Defender Division staff attorneys are considerably lower than the salaries paid to almost all other attorneys employed by the Commonwealth of Massachusetts (so called "Counsel I" and "Counsel II" attorneys). The starting attorney salary in the Public Defender Division is \$35,000 per year. By contrast, the entry level Counsel I salary is \$43,347.46, and the entry level Counsel II salary is \$49,683.93. Public defenders with five years' experience earn \$39,000 per year; whereas Counsel I attorneys with five years' experience earn \$50,986.78, and Counsel II attorneys with five years' experience are paid \$58,334.64. Public Defender Division attorneys with ten years' experience are paid only

May-28-2004 10:01am From-COMMITTEE FOR PUBLIC COUNCIL SERVICES

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\$50,000 per year; while Counsel I attorneys earn \$59,219.42, and Counsel II attorneys are paid \$67,652.78. A number of my attorneys have supervisory responsibilities and, thus, they would qualify for Counsel II pay were they paid on the same pay scale as attorneys in most other Commonwealth agencies.

8. The low salaries paid to Public Defender Division attorneys have led many staff attorneys to resign their employment with the agency. The lack of significant salary increases has severely hurt attorney morale. I have no doubt that the talented, committed, and experienced public defenders in my office would resign their positions rather than accept the additional burdens of relocation and daily travel that would accompany any transfer to Hampden County.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 28th DAY OF MAY, 2004.


Michael S. Hussey

BBO#547772

Committee for Public Counsel Services

340 Main Street

Worcester, MA 01608-1601

(508) 791-9288

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF NATHANIEL GREEN

I, Nathaniel K. Green, state as follows:

1. I am the Attorney-in-Charge of the Berkshire County office, located in Pittsfield, Massachusetts, of the Public Defender Division of the Committee for Public Counsel Services (CPCS). I have been employed as an attorney with CPCS since 1988, and I have been Attorney-in-Charge of the Pittsfield office since 2000.

2. The Pittsfield office consists of a total of three staff attorneys (including myself), an investigator, and an administrative assistant. Three years ago our office had four staff attorneys, but one attorney accepted the "early retirement" offered by the Commonwealth and budget cuts prevented us from replacing her.

3. The Pittsfield office accepts appointments only in Superior Court jurisdiction felony cases, so called "bind over" felonies because they are not within the final jurisdiction of the District Court. The office's attorneys represent clients in these cases prior to indictment in the Northern Berkshire, Central Berkshire, and Southern Berkshire District Courts. The office also accepts some cases that begin by direct indictment in Berkshire Superior Court. Our cases primarily involve sex offense charges, minimum mandatory drug trafficking offenses, home invasions, minimum mandatory firearm charges, armed robberies, and very serious aggravated assaults. In practical terms, this means that in most of our cases the stakes are extremely high, and our clients are facing the possibility of substantial incarceration should they either plead or be found guilty. Our office also handles a small number of sex offender registry matters.

4. The loss of a staff attorney position in the Pittsfield office has required us to cut back on case intake by no longer accepting concurrent jurisdiction felonies in District Court and no longer accepting youthful offender cases in Juvenile Court.

5. The three attorneys in the Pittsfield office have very full caseloads, and the attorneys are working extraordinarily hard to provide effective

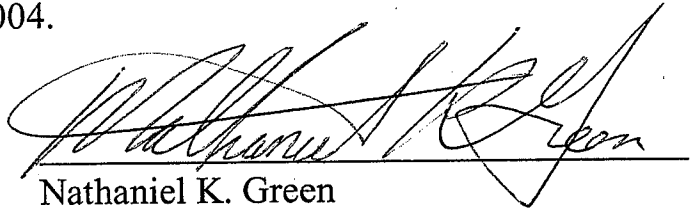
representation to their current clients. The office's attorneys work considerably more than forty hours per week, and it is not uncommon for our attorneys to work on nights and weekends. On May 21, 2004, the Berkshire County grand jury indicted fifty-eight individuals, almost all of whom are indigent, and many of whom will end up becoming our clients. I do not believe that our attorneys could not take on additional cases and still provide constitutionally competent representation to existing clients.

6. The salaries paid to Public Defender Division staff attorneys are considerably lower than the salaries paid to almost all other attorneys employed by the Commonwealth of Massachusetts (so called "Counsel I" and "Counsel II" attorneys). The starting attorney salary in the Public Defender Division is \$35,000.00 per year. Attorneys with five years experience earn \$39,000.00 per year. Attorneys with ten years experience as public defenders earn \$50,000.00 per year. The low salaries paid to Public Defender Division attorneys have led many staff attorneys to leave the agency. The lack of significant salary increase has done serious damage to attorney morale. If either of the staff attorneys in my office were transferred to Hampden County, I feel sure that the increased burden on

those attorneys of relocation and daily travel would cause one or both to resign.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 27th DAY OF MAY, 2004.

A handwritten signature in black ink, appearing to read 'Nathaniel K. Green', written over a horizontal line.

Nathaniel K. Green

BBO #546883

Committee for Public Counsel Services

139 North Street

Pittsfield, MA 01201-5101

(413) 447-7342

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2004-1998

NATHANIEL LAVALLEE, *et al.*

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF ALAN RUBIN

I, Alan Rubin, do hereby depose and say that the following statements are true to the best of my information, knowledge, and belief:

1. I am the Attorney-in-Charge of the Hampshire-Franklin County office, located in Northampton, Massachusetts, of the Public Defender Division of the Committee for Public Counsel Services (CPCS). I have been employed as an attorney, first with the Massachusetts Defenders Committee and then CPCS, continuously since 1972, and I have been Attorney-in-Charge of the Hampshire-Franklin office since 1988.

2. The Hampshire-Franklin County office consists of a total of three staff attorneys (including myself), an investigator, and an administrative assistant.

3. The Hampshire-Franklin County office accepts appointments only in Superior Court jurisdiction felony cases, so called "bind over" felonies

because they are not within the final jurisdiction of the District Court. The office's attorneys represent clients in these cases prior to indictment in the Northampton, Hadley, and Ware District Courts. We do not have sufficient staff to cover the Orange or Greenfield District Courts. The office also accepts all indigent cases that begin by direct indictment in Hampshire and Franklin Superior Courts, absent a conflict of interest.

4. Our cases primarily involve sex offense charges, minimum mandatory drug trafficking offenses, and very serious aggravated assaults. In practical terms, this means that in the majority of our cases the stakes are extremely high, and our clients are facing the possibility of substantial incarceration should they either plead or be found guilty. Our office also handles a number of sexually dangerous person commitment proceedings and sex offender registry matters, each of which has been and continues to be extremely time-consuming.

5. The three attorneys in the Hampshire-Franklin County office have very full caseloads, and the attorneys are working extraordinarily hard to provide effective representation to their current clients. The office's attorneys work considerably more than forty hours per week, and it is not uncommon for attorneys to work on nights and weekends. I believe that our attorneys could not take on cases in addition to our normal intake and still

provide constitutionally competent representation to existing clients.

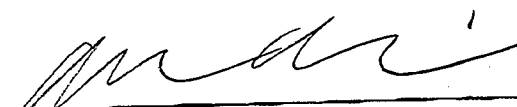
6. Both Franklin and Hampshire County Superior Courts have single judge sessions during any given month. Our office routinely represents defendants in approximately one-half of the cases on the criminal lists in these courts. As a result, our attorneys are almost always "on call" for court appearances.

7. As a result of the geographically large two-county area covered by this office, the attorneys in the CPCS Hampshire-Franklin County office spend considerable time traveling between the various District and Superior Courts, as well as traveling to see clients who are incarcerated, and traveling for case-related investigation.

8. The salaries paid to Public Defender Division staff attorneys are considerably lower than the salaries paid to almost all other attorneys employed by the Commonwealth of Massachusetts (so called "Counsel I" and "Counsel II" attorneys). The starting attorney salary in the Public Defender Division is \$35,000.00 per year. Attorneys with five years experience earn \$39,000.00 per year. Attorneys with ten years experience as public defenders earn \$50,000.00 per year. The low salaries paid to Public Defender Division attorneys have led many staff attorneys to leave the agency. The lack of significant salary increase has done serious damage

to attorney morale. I believe that if any of the attorneys in this office were transferred to Hampden County, the increased burden on those attorneys of relocation and daily travel would likely cause them to resign.

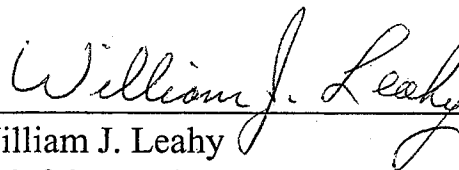
SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 27th DAY OF MAY, 2004.



Alan Rubin
BBO #432540
Committee for Public Counsel Services
403 Pleasant Street
Northampton, MA 01060-3914
(413) 586-5764

CERTIFICATE OF SERVICE

I, William J. Leahy, do hereby certify that on this 28th day of May, 2004, I served the foregoing Status Report, Affidavits and Attachments in support thereof filed on behalf of the petitioners in Nathaniel Lavallee, et al. v. The Justices of the Springfield District Court , SJ-2004-1998, by mailing copies, first-class and postage pre-paid, to the offices of David Kerrigan, Assistant Attorney General, One Ashburton Place, Boston, Massachusetts 02108.

A handwritten signature in cursive script, reading "William J. Leahy", is written over a horizontal line.

William J. Leahy

Chief Counsel

BBO #290140

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